

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHAEL ZIENTEK, *et al.*, §
§
Plaintiffs, §
§
VS. § CIVIL ACTION NO. H-03-5540
§
KERR ENTERPRISES INC., §
§
Defendant. §

**ORDER OF DISMISSAL WITH PREJUDICE
AND ENTRY OF FINAL JUDGMENT AS TO
CLAIMS OF PLAINTIFF JOSEPH PONCIK**

The motion to dismiss claims of plaintiff Joseph Poncik filed by defendant Kerr Enterprises, Inc. is granted, based on Poncik's repeated failure to appear for depositions despite timely notice and otherwise to participate in this suit.

The claims of plaintiff Joseph Poncik against defendant Kerr Enterprises, Inc. are dismissed, with prejudice. It is further ordered that Joseph Poncik may not appear as a witness at the trial of this case.

Under Rule 54(b) of the Federal Rules of Civil Procedure, the court directs the entry of final judgment as to the claims of Joseph Poncik, finding no just reason for delay.

SIGNED on June 23, 2005, at Houston, Texas.



Lee H. Rosenthal
United States District Judge